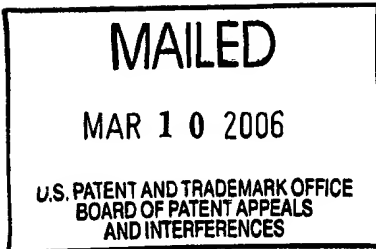


UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ERIC LEVY-ABEGNOLI
and
PASCAL THUBET

Application 09/963,737

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on January 30, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being electronically returned to the examiner. The matters requiring attention prior to docketing are identified below:

A review of the Image File Wrapper (IFW) indicates that appellants filed an Appeal Brief on July 21, 2005 using the format set forth in 37 CFR § 41.37(c). However, the Appeal Brief does not fully comply with 37 CFR § 41.37(c).

37 CFR § 41.37 states:

(a)(1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.

(2) The brief must be accompanied by the fee set forth in § 41.20(b)(2).

(b) On failure to file the brief, accompanied by the requisite fee, within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

. . . .

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

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An in-depth review of the Appeal Brief indicates that the following sections are missing:

- 1) "Evidence appendix," as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) "Related proceedings appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

A supplemental brief that is in compliance with § 41.37(c) is required. For more information, see the United States Patent and Trademark website www.uspto.gov, and, in particular, the web page entitled "More Information on the Rules of Practice Before the Board of Patent Appeals and Interferences, Final Rule" located at the following URL:

www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html

In addition, the Examiner's Answer mailed October 3, 2005 does not comply with the headings set forth in the new rules under 37 CFR § 41.37(c) because it does not list the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the § 102(e) rejection of claims 21-32. Correction is required.

Accordingly, it is


ORDERED that the application is returned to the Examiner:

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- 1) to hold the Appeal Brief filed July 21, 2005 defective;
- 2) for notification to appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37 or for the examiner to submit a statement regarding the position taken on the missing appendices;
- 3) for consideration of the supplemental Appeal Brief, if so submitted;
- 4) to vacate the Examiner's Answer mailed October 3, 2005, and issue a new Examiner's Answer in compliance with the new rules which became effective on September 13, 2004 which includes a proper response to the section entitled "Evidence Relied Upon";
- 5) to have a complete copy of any subsequent Examiner's Answer scanned into the IFW; and
- 6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____


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CRF:psb

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